LABOUR LAW IN SWEDEN

SECOND EDITION

AXEL ADLERCREUTZ †
BIRGITTA NYSTRÖM



Labour Law in Sweden

Second Edition

Axel Adlercreutz † Birgitta Nyström

This book was originally published as a monograph in the International Encyclopaedia of Laws/Labour Law and Industrial Relations.

General Editors: Roger Blanpain, Frank Hendrickx



Published by: Kluwer Law International PO Box 316 2400 AH Alphen aan den Rijn The Netherlands Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by: Aspen Publishers, Inc.

7201 McKinney Circle Frederick, MD 21704 United States of America

Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:
Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper

ISBN 978-90-411-5892-5

This title is available on www.kluwerlawonline.com

© 2015, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

The Authors

Axel Adlercreutz 1917–2013† was Professor of Commercial Law at the University of Lund in Sweden until 1983. In 1940 he received his BA from the University of Lund and in 1943 completed the LLB at that university. After further postgraduate studies and a year at the London School of Economics and Political Science, Professor Adlercreutz had a short period of legal practice at the Lund District Court (1952–3). In 1954 he received his doctorate in law and was appointed Assistant Professor of Private Law at the University of Lund in that same year. He remained at Lund, becoming Associate Professor of Private Law in the Faculty of Law in 1959 and Professor of Commercial Law in the Faculty of Social Science in 1967. From 1974 to 1977 he was also Dean of the Faculty of Social Science. Professor Adlercreutz is the author of numerous publications, chiefly in the fields of labour law and contract law. His publications are among the most consulted by Swedish lawyers.



Birgitta Nyström was born on 23 April 1957. In 1980 she received her LLB at the University of Lund in Sweden. After legal practice at a District Court and as a trade union lawyer she returned to Lund and received her doctorate in law in 1990. She was appointed Assistant Professor of Private Law in 1991 and Professor pro temps of Commercial Law at the Faculty of Social Sciences in 1995. In 1999–2000 she was Professor of Law at the University of Umeå in Sweden. Since 2001 she has been Professor of Private Law at the Law Faculty, University of Lund. During 2002–8 she was Deputy Dean of the Law Faculty. During the period 2009–2115 she

has the Swedish Research Council's Chair in Swedish and European Labour Law. She has numerous appointments as board member in research councils and government institutions, i.e. the State Mediation Council. Since 2007 she has been a member of the Social Committee of the European Council. Her publications are mostly in the fields of labour law and European labour law.

The Authors	3
Acknowledgements	17
List of Abbreviations	19
General Introduction	21
Chapter 1. The General Background	21
§1. Geography	21
§2. POPULATION	21
§3. EMPLOYMENT STATISTICS	22
§4. THE POLITICAL AND ADMINISTRATIVE SYSTEM	23
§5. THE LEGAL SYSTEM AND THE LEGISLATIVE PROCESS	24
§6. The Economy	26
§7. Ownership Structure	27
§8. The Public Sector	28
§9. General Attitudes and Values	29
Chapter 2. Definitions and Concepts	30
§1. Labour Law and Social Law	30
§2. Labour Law: Individual and Collective Labour Law	31
§3. Industrial Relations	31

5

§4. THE CON	TRACT OF EMPLOYMENT	32
§5. THE CON	NCEPT OF EMPLOYEE	32
§6. Worker	S AND SALARIED EMPLOYEES	34
§7. THE CON	ICEPT OF EMPLOYER	35
§8. THE CON	CEPTS OF TRADE UNION AND ESTABLISHED TRADE UNION	36
Chapter 3.	The Historical Background	38
§1. From th	IE OLD REGULATION SYSTEM TO NON-INTERVENTION	38
§2. THE RISE	E OF TRADE UNIONS	39
§3. THE EMP	PLOYERS ORGANIZE	41
§4. Collect	TIVE RELATIONS ARE DEVELOPED	41
§5. THE DEV	VELOPMENT OF THE COLLECTIVE AGREEMENT	44
§6. THE ACT	OF 1936 ON THE RIGHTS OF ASSOCIATION AND NEGOTIATION	46
§7. THE SAL	tsjöbaden Epoch 1938–70	47
§8. Labour	LEGISLATION IN FIELDS OUTSIDE COLLECTIVE LABOUR LAW	49
§9. THE LEC	GISLATIVE 'EXPLOSION' IN THE 1970S AND TRENDS THEREAFTER	50
§10. DEVELOUNION	DPMENTS AFTER 1995; THE IMPACT OF EUROPEAN LAW	52
Chapter 4.	Role of Government Institutions in the Shaping and Administration of Labour Law and Industrial Relations	56
§1. THE GO	VERNMENT AND WAGE NEGOTIATIONS	56
§2. THE MIN AUTHOR	NISTRY OF EMPLOYMENT AND THE ADMINISTRATIVE ITIES	56
§3. SOCIAL	SECURITY	58
§4. Employ	MENT SERVICES	58

T	ah	le	of	Cor	nten	t

§5. Immigrant Labour	59
§6. INDUSTRIAL SAFETY AND THE WORKING ENVIRONMENT	59
§7. Anti-discrimination Regulation	60
Chapter 5. Sources of Labour Law	61
§1. CONSTITUTION	61
§2. LEGISLATION AND JUDGE-MADE LAW	61
§3. COLLECTIVE AGREEMENTS	63
§4. THE INDIVIDUAL AGREEMENT	64
§5. Works Rules	65
§6. Custom and Usage	65
§7. THE HIERARCHY OF THE SOURCES OF LABOUR LAW	66
Chapter 6. Private International Labour Law	67
§1. Introduction	67
§2. JURISDICTION OF THE SWEDISH COURTS	67
§3. APPLICABLE LAW	70
§4. Labour Law Relationships of a 'Public' Nature	75
§5. CONCLUDING REMARK	76
Part I. The Individual Employment Relation	77
Chapter 1. Introduction	77
§1. DIFFERENT CATEGORIES OF EMPLOYEES – SPECIAL LEGISLATION	77
§2. THE INDIVIDUAL EMPLOYMENT CONTRACT I. Forms of Engagement of Labour II. Form and Content III. Capacity to Conclude Employment Contracts	79 79 82 82

Chapter 2. Rights and Duties of the Parties in the Course of the Employment Relationship	84
§1. THE EMPLOYER'S POSITION AND MANAGERIAL POWERS	84
§2. THE EMPLOYER'S LIABILITIES IN CONTRACT AND TORT	85
§3. THE EMPLOYEE'S LIABILITIES	85
§4. THE EMPLOYER'S DISCIPLINARY POWERS	86
§5. Safety and Working Environment	86
§6. Has the Employer a Duty to Provide Work?	86
§7. THE EMPLOYEE'S DUTY TO WORK	87
§8. THE EMPLOYEE'S DUTY TO OBEY ORDERS	89
§9. THE EMPLOYEE'S DUTY TO BE LOYAL	90
Chapter 3. Working Time, Holidays, Annual Vacation	92
§1. REGULATION OF WORKING HOURS	92
§2. SPECIAL RESTRICTIONS FOR MINORS	92
§3. THE WORKING TIME ACT	93
§4. OTHER PROVISIONS CONCERNING OVERTIME WORK	95
§5. PART-TIME WORK; WORK SHARING	96
§6. HOLIDAYS	97
§7. Annual Vacation	97
§8. Employee's Right to Time Off	100
Chapter 4. Remuneration and Benefits	101
§1. DIFFERENT KINDS OF REMUNERATION	101
§2. PAY SYSTEMS	102
§3. Wage Protection Measures	104

	I. Introduction II. Priority in the Event of an Employer's Bankruptcy III. State Wage Guarantees IV. The Attachment of Wages V. Setting-off	104 104 104 105 105
§4.	EQUAL PAY	106
Ch	apter 5. Interruptions of Work, Incapacity, the Right to Time Off	107
§1.	SHORT INTERRUPTIONS FOR TECHNICAL REASONS	107
§2.	Interruption of Operations for Longer Periods; Lay-off	107
§3.	LATE ARRIVAL	108
§4.	INCAPACITY TO WORK I. Illness II. Industrial Accidents and Injury III. Pregnancy and Childbirth IV. Total Defence Service V. Public Duties	108 109 110 110 110
§5.	THE EMPLOYEE'S RIGHT TO TIME OFF I. Leave for General Personal Reasons II. Leave for Childcare and Kindred Reasons III. Study Leave IV. Leave for Job Seeking V. Leave for Trade Union Purposes	111 111 111 114 114
Ch	apter 6. Termination of Employment Contracts and Job Security	115
§1.	Ways of Terminating or Suspending the Employment Contract; Lay-off	115
§2.	HISTORICAL BACKGROUND	116
§3.	LEGISLATION IN THE 1970S AND THEREAFTER	118
§4.	MEANS OF TERMINATING EMPLOYMENT I. The Employee Brings the Employment to an End II. The Employer Brings the Employment to an End A. Restrictions as to Form of Employment B. Dismissal with Notice	119 119 120 120

	 C. Periods of Notice and Economic Benefits D. What Is Just Cause for Dismissal? 1. Redundancy 2. Circumstances Relating to the Employee E. Summary Dismissal F. Formalities and Procedures G. Non-renewal of Fixed-term Employment 	121 122 123 123 126 127 127
§5.	LAY-OFF	127
§6.	PRIORITY RULES APPLYING TO DISMISSAL AND RE-EMPLOYMENT	129
§7.	COLLECTIVE AGREEMENT REGULATIONS CONCERNING THE EMPLOYMENT PROTECTION ACT	131
§8.	PROCEDURE AND SANCTIONS I. The Preparatory Stage: Notification and Consultation II. Formalities Connected with Dismissal, Discharge, etc. III. Dispute Procedure and Remedies	131 132 133 134
§9.	TRANSFER TO ANOTHER JOB WITHIN THE FIRM	135
§10). Transfer of the Undertaking	136
Ch	apter 7. Protection against Discrimination in Employment	137
§1.	DISCRIMINATION IN EMPLOYMENT	137
§2.	THE CONCEPT OF DISCRIMINATION	137
§3.	GENERAL ANTI-DISCRIMINATORY REGULATION IN SWEDEN	138
§4.	Gender	138
§5.	RACE, ETHNICITY AND FOREIGN CITIZENSHIP	140
§6.	AGE, DISABILITY, SEXUAL ORIENTATION, PART-TIME AND FIXED-TERM EMPLOYMENT	141
§7.	THE 2008 DISCRIMINATION ACT	142
§8.	THE ROLE OF THE LABOUR MARKET ORGANIZATIONS	146
§9.	SOME REMARKS ABOUT THE IMPACT OF EU LAW	147

11

Chapter 8. Protection of Certain Categories of Employees, Atypical Employment	148
§1. FIXED-TERM CONTRACTS	148
§2. PART-TIME CONTRACTS	148
§3. AGENCY WORK	149
Chapter 9. Covenants of Non-competition	151
Chapter 10. Inventions by Employees	152
Chapter 11. Settlement of Disputes	154
§1. PROCEDURES FOR INDIVIDUAL DISPUTES WITH OR WITHOUT UNION INVOLVEMENT	154
§2. DISPUTES INVOLVING A UNION I. The Role of the Organizations II. Dispute Negotiation III. Arbitration IV. The Labour Court, Its Establishment and Composition V. The Competence of the Labour Court VI. The Labour Court: Procedure and Sanctions VII. The Role of the Labour Court	155 155 156 156 156 158 160
§3. DISPUTES NOT INVOLVING A UNION	160
§4. Rules on the Priority Right of Interpretation in Disputes	161
Part II. Collective Labour Relations	163
Chapter 1. Trade Union Freedom and the Right to Organize	163
§1. THE TWO ASPECTS	163
§2. Trade Union Freedom	163
§3. THE RIGHT OF ASSOCIATION OR RIGHT TO ORGANIZE: RECOGNITION OF THESE RIGHTS	164
§4. THE CONTENTS OF THE RIGHT OF ASSOCIATION	165
§5. VIOLATION OF THE RIGHT OF ASSOCIATION	167

§6. Rules of Evidence	167
§7. THE RIGHT OF ASSOCIATION AND UNION SECURITY AGREEMENTS	168
§8. SANCTIONS AND REMEDIES	170
§9. SPECIAL REGULATIONS FOR EMPLOYEES IN EXECUTIVE POSITIONS	171
Chapter 2. The Trade Unions and Employers' Associations	172
§1. CONCEPT AND LEGAL STATUS	172
§2. TRADE UNIONS I. Organization and Membership II. Manual Workers' Unions A. LO 1. Internal Organization 2. Union Rules 3. Check-off 4. Ideology and Attitudes B. Syndicalist and Break-away Unions III. Salaried Employees' Unions IV. Democracy in the Trade Unions	172 173 173 173 173 176 177 178 179 179
§3. EMPLOYERS' ASSOCIATIONS I. Employers' Organizations in the Private Sector II. SN: Structure, Policies and Internal Organization	181 181 181
§4. RELATIONS BETWEEN THE INDIVIDUAL AND THE ORGANIZATION	183
Chapter 3. The Right of Negotiation	186
§1. Its Fundamental Importance	186
§2. WHAT IS THE RIGHT OF NEGOTIATION?	186
§3. THE CONTENTS OF THE RIGHT OR DUTY TO NEGOTIATE	187
§4. What Does 'Negotiation' Signify?	187
§5. Subject Matter and Types of Negotiation	188
§6. The Right of Negotiation and the Right to Resort to Industrial Action	189

Chapter 4. The Collective Bargaining System and the Collective Agreement	190
§1. THE CENTRALIZED COLLECTIVE BARGAINING SYSTEM	190
§2. DESCRIPTION OF A COLLECTIVE AGREEMENT	194
§3. THE COLLECTIVE AGREEMENT FROM A LEGAL POINT OF VIEW I. Concept and Form II. Duration and Termination of Collective Agreements:	197 197
Transfer of Enterprises A. Duration B. Termination C. Transfer III. Construction and Interpretation of Collective Agreements	199 199 199 200 200
§4. LEGAL EFFECTS OF COLLECTIVE AGREEMENTS I. Who Is Bound by a Collective Agreement? II. The Compulsory Effect of the Collective Agreement III. Effects on Outsiders IV. Effects after Expiry V. The Peace Function VI. The Effect of 'Establishing' the Trade Union VII. Sanctions	203 203 204 205 207 207 207 208
Chapter 5. Industrial Action and the Peace Obligation; Protection of Vital Needs; Settlement of Industrial Disputes	210
§1. Industrial Conflict in Recent Years	210
§2. Types of Industrial Action	213
§3. INDUSTRIAL CONFLICT AND THE LAW	215
§4. THE PEACE OBLIGATION ACCORDING TO THE CO-DETERMINATION ACT I. Some Basic Concepts II. The Co-determination Act §41 III. Commentaries on Rights Disputes and Claims for Alteration IV. Sympathetic Actions V. Limitations on the Peace Obligation: Permissible Industrial Action VI. Sympathetic Strikes in Support of Foreign Workers; Political Strikes	216 217 218 220 22 22

§5.	RULES CONCERNING UNLAWFUL STRIKES I. Liability of Unions II. Liability of Individual Employees III. Duty to Confer	223 223 224 225
§6.	CONTRACTUAL RESTRICTIONS ON INDUSTRIAL ACTION	226
§7.	PROTECTION OF VITAL NEEDS	228
§8.	SETTLEMENT OF INDUSTRIAL DISPUTES	230
§9.	CLOSING REMARKS	232
Ch	apter 6. Institutionalized Relations; Joint Regulation and Co-determination	233
§1.	METHODS OF COOPERATION PRIOR TO THE 1976 CO-DETERMINATION ACT I. Works Councils II. Early Collaboration in Matters of Industrial Safety III. Other Collaboration Agreements IV. The Legislation of the 1970s	233 233 234 235 236
§2.	Co-operative Negotiations and the Right of Veto in the Co-determination Act	237
§3.	THE RIGHT TO INFORMATION AND THE REGULATION OF SECRECY	241
§4.	REGULATIONS CONCERNING CO-DETERMINATION AGREEMENTS	242
§5.	PRIORITY RIGHT OF INTERPRETATION	244
§6.	THE ACT CONCERNING TRADE UNION REPRESENTATIVES	247
§7.	COLLABORATION ON MATTERS OF INDUSTRIAL SAFETY AND WORKING CONDITIONS I. Safety Representatives II. The Safety Committee III. Working Environment Agreements	250 250 252 252
§8.	BOARD REPRESENTATION FOR EMPLOYEES	253
§9.	EUROPEAN WORKS COUNCILS, EUROPEAN COMPANY	256
810). The Development Agreement	258

	Table of Contents
§11. Some Remarks on the Impact of the Legislation Concerning Industrial Democracy	262
Selected Bibliography	265
Index	267

Labour Law in Sweden

Second Edition

Axel Adlercreutz †
Birgitta Nyström

This book was originally published as a monograph in the International Encyclopaedia of Laws/Labour Law and Industrial Relations.

General Editors: Roger Blanpain, Frank Hendrickx



Published by:

Kluwer Law International

PO Box 316

2400 AH Alphen aan den Rijn

The Netherlands

Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:

Aspen Publishers, Inc.

7201 McKinney Circle

Frederick, MD 21704 United States of America

Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:

Turpin Distribution Services Ltd.

Stratton Business Park

Pegasus Drive, Biggleswade Bedfordshire SG18 8TQ

United Kingdom

Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper

ISBN 978-90-411-5892-5

This title is available on www.kluwerlawonline.com

© 2015, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

此为试读,需要完整PDF请访问: www.ertongbook.com